

Montgomery *v.* Best Buy Stores, L.P.

Colo. Sup. Ct. No. 2026SC236 • On certiorari to Colo. Ct. App. No. 2025CA327 • From Jefferson Cty. Dist. Ct. No. 2023CV226

To be filed: **May 28, 2026** • Petitioner *pro se* • Amicus deadline: **11:59 PM MDT, June 4, 2026** (C.A.R. 53(g))

QUESTIONS PRESENTED

- I. Whether a court may grant summary judgment based on evidence introduced for the first time in a reply brief, **absent** a motion to strike or surreply request from the non-movant, in **pure diametric conflict** with *Amada Family Ltd. Partnership v. Pomeroy*, 2021 COA 73.
- II. Whether a court may **conflate** independent motions for summary judgment by treating one party's reply as a **surrogate surreply** to the opposing party's reply, in conflict with *Morlan v. Durland Trust Co.*, 252 P.2d 98 (Colo. 1952), and *Central Bank & Trust v. Robinson*, 326 P.2d 82 (Colo. 1958).
- III. Whether a court may characterize procedural challenges to the movant's burden of proof as **factual** "denials" sufficient to allow the movant to introduce reply-only evidence as "rebuttal," thereby relieving the movant of its initial Rule 56 burden.
- IV. Whether a court may deem an issue properly "raised" when the movant merely discusses a **bare topic** without supporting evidence, in conflict with *Suncor v. Aspen*, 178 P.3d 1263 (Colo. App. 2008).
- V. Whether a court may accept **mutually irreconcilable evidence** as simultaneously true, invert foundation burdens, draw merely colorable inferences against the non-movant, and dismiss sworn affidavit testimony and corroborating body camera footage as "**self-serving speculation**," in conflict with *Scott v. Harris*, 550 U.S. 372 (2007).

OPERATIVE FACTS

- ◆ Best Buy filed an opening MSJ with **no affidavit, no receipt, and no business record** — only conclusory argument.
- ◆ Best Buy introduced its sole evidence — a manager's affidavit and a receipt — **for the first time in MSJ reply**. The District Court relied on both to grant summary judgment.
- ◆ The receipt and the affidavit are **internally irreconcilable**: the receipt timestamp is **one minute after** the body camera shows the detention had already begun, and the manager's "stole and immediately left" claim leaves no time for any purchase at all.

WHAT THE COURT OF APPEALS DID WRONG

- i. Imposed an uncodified *Amada*-conflicting forfeiture rule, holding that Plaintiff waived objections because no motion to strike or surreply request was filed before judgment was entered. (Op. ¶ 34.)
- ii. Conflated independent motions, treating Plaintiff's Cross-MSJ reply as a surrogate surreply to Defendant's MSJ reply. (Op. ¶ 36.)
- iii. Recharacterized burden-of-proof arguments as factual "denials," allowing reply-only evidence to be introduced under the guise of "rebuttal." (Op. ¶ 35) — even while conceding that Plaintiff "*provided no contrary evidence*" to actually "rebut." (Op. ¶¶ 14, 15.)
- iv. Treated bare, evidence-free topic discussion as "raising an issue" for Rule 56 burden-shifting purposes. (Op. ¶ 35.)

WHY IT MATTERS STATEWIDE

- ▶ The rules below now permit well-resourced defendants to file **evidence-free opening briefs**, observe the non-movant's response, and then introduce all of their actual evidence only in reply — labeling it "rebuttal" and arguing forfeiture against any later objection.
- ▶ *Pro se* litigants comprise the **majority of Colorado civil plaintiffs**. The Panel's uncodified forfeiture trap closes the courthouse door for the unrepresented — precisely the population least equipped to navigate it.

The Ask. Three pathways for amicus support — **sign as drafted** (the unsigned 20-page, 3,122-word draft is already **C.A.R. 29-** and **53-** compliant), **modify and sign**, or **replace with your own brief**. Filing deadline: **11:59 PM MDT, Thursday, June 4, 2026**. Drafts, full record, and three-pathway logistics available at: bestbuyamicus.com/amicus.html.